



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

14/15

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No.577/2001</u>	
	<u>APPELLANT</u>	Tukaram, S/o Banshilal Marar, Aged 28 years, R/o Village Khapari, P.S. Salbagh, Presently residing at Village Matekata, P.S. Dongargarh, District Rajnandgaon.
		<u>Versus</u>
	<u>RESPONDENT</u>	State of Chhattisgarh, Through the Station House Officer P.S. Dongargarh, District Rajnandgaon.
	<u>CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE</u>	
	D.B.: <u>HON'BLE SHRI L.C BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.</u>	
	<u>ORAL JUDGMENT</u> (26.09.2007)	
	<u>L.C. Bhadoo, J:-</u> Shri Anant Bajpayee, Counsel for the appellant. Shri U.K.S. Chandel, Panel Lawyer for the State. Heard.	

मामला क्रमांक G.A. 577/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	This appeal is directed against the judgment of conviction and order of sentence dated 19th May 2001 passed by the Sessions Judge, Rajnandgaon, in Sessions Trial No.09/2001, whereby, the learned Sessions Judge after holding the accused/appellant guilty of the offence punishable under Section 302 of the IPC, sentenced him to undergo imprisonment for life. Case of the prosecution in brief is that in the intervening night of 26-27th November 2000, accused/appellant was in the house of his father-in-law namely Roopram (since deceased) and all the family members were sleeping. At about 12:30 in the night, accused/appellant after giving beating to Chandrakumar, Samundar Bai, Durdeshiram etc. asked them to wake up and informed them that he has committed murder of his father-in-law. When they came to know about this, these persons went near the cot where Roopram was sleeping, they found that there were cut injuries on the neck and head of the deceased, teeth were broken, blood was oozing out of the injuries, on which, they asked accused/appellant as to why he has attacked Roopram, then, accused/appellant disclosed that since Roopram was having illicit relations with his wife i.e. daughter of Roopram, he has committed his murder. On this, they raised cries, hearing their cries, PW-2 - Dhruvram (cousin brother of Roopram), came there, other persons also came there. Thereafter, the accused/appellant ran away towards the forest.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	The village Kotwar was informed. The matter was reported to Police Station - Dongargarh by Chandra Kumar under Ex.P/1. After registering the case against the accused/appellant for committing murder of Roopram, under Section 302 of the IPC, the Investigating Officer left for the scene of occurrence and after giving notices to the Panchas, prepared inquest (Ex.P/3) on the body of deceased -Roopram. He prepared Site Plan under Ex.-P/4 of the place of occurrence, one blood stained sari was seized under Ex.P/6. The site plan was prepared under Ex.P/7 by Halka Patwari. While in police custody, accused/appellant gave memorandum under Ex.-P/8 regarding the place where spade was lying and in pursuance of that, he got recovered the spade under Ex-P/9. Body of Roopram was sent for postmortem to the Government Hospital, Dongargarh under Ex.-P/10, where, Dr. M.L. Jaiswal (PW- 7) conducted postmortem and opined that cause of death was shock and haemorrhage. He prepared postmortem report (Ex.-P/10-A). After completion of the investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Dongargarh, who in turn committed the case to the Sessions Judge, Rajnandgaon. The prosecution in order to establish charge against accused/appellant examined 10 witnesses. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	him in the prosecution evidence and stated that he is innocent and has been implicated in a false case, the witnesses have stated against him on account of animosity. Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned. We have heard Shri Anant Bajpayee, Counsel for the appellant and Shri U.K.S. Chandel, Panel Lawyer for the State. Shri Bajpayee has not disputed the homicidal death of Roopram. Moreover, Dr. M.L. Jaiswal (PW-7), who conducted postmortem on the body of deceased on 27/11/2000, has stated that there were 6 lacerated wounds on the neck and head. There was a linear abrasion below the neck and the left frontal bone was fractured, cause of death was shock and haemorrhage. The injuries were homicidal in nature; his report is Ex.-P/10-A. Therefore, in view of the above medical evidence, it is established that the death of Roopram was homicidal in nature. As far as involvement of the accused/appellant in crime in question is concerned, in this case, there is no ocular or direct evidence. The case rests on the circumstantial evidence i.e. extra judicial confession made by the accused/appellant at the place of occurrence itself before PW-1 - Chandra Kumar, PW-4- Durdeshiram (brothers-in-law of the accused and sons of the deceased) and PW-2 - Dhruvram (cousin brother of the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	deceased). In order to place reliance on the extra judicial confession, as per the settled law, there must be clear cut evidence that the extra judicial confession made by the accused/appellant was voluntary, true and prompt. Mr. Bajpayee argued that all these 3 witnesses are closely related to the deceased i.e. PW-1 - Chandra Kumar and PW-4 - Durdeshiram are sons of the deceased, whereas PW-2 - Dhruv Ram is cousin brother of the deceased and no independent witness has been adduced, therefore, no reliance can be placed on their evidence. It is an admitted position that PW-1 - Chandra Kumar and PW-4 - Durdeshiram are sons and PW-2- Dhruvram is cousin brother of the deceased - Roopram and uncle-in-law of the accused/appellant. It is a settled law that evidence of close relatives cannot be outrightly rejected merely on the basis that they are closely related to the deceased. However, in such case, it is the duty of the Court to scrutinize the evidence of such witnesses with great care and circumspection in order to ascertain the veracity of their evidence. PW-1 - Chandra Kumar has stated that on the fateful night, at about 12:00 O' Clock, in one room he alongwith the accused/appellant and his younger brother were sleeping and in another room, his mother and his sisters were sleeping. His	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	father was sleeping outside the house. The accused/appellant after attacking his father asked them to wake up and said that he has committed murder of Roopram and whatever they want to do, they may do it. In the meanwhile, villagers came there and in front of them also, he made extra judicial confession that he has committed murder of Roopram. Thereafter, they saw Roopram lying dead. There were injuries on the neck and head. It is also stated that Dhruv Ram, Lilhare, Sinhaji, Sarpanch also came on the spot and thereafter, a report was made to this effect. The above evidence of Chandra Kumar is also corroborated by the evidence of PW-4-Durdeshiram (son of the deceased and brother of PW-1 - Chandrakumar), who has stated that on the fateful night, the accused was in their house. In the night, when they were sleeping, accused asked them to wake up and said that he has committed murder of their father. PW-2 - Dhruvram, cousin brother of the deceased, has stated that when he was sleeping in his house, at about 12:00 in the night, Samundar Bai, wife of Roopram, came and called him, on which, he went to her house and saw that there were injury on the neck of Roopram and he was dead. On enquiry, accused disclosed that he has committed murder of Roopram. In cross-examination of these 3 witnesses, the defence has not been able to elicit any circumstance regarding extra judicial confession made by the accused before them, therefore,	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	evidence of these 3 witnesses regarding extra judicial confession by the accused before them remains unchallenged. All three witnesses have categorically stated that immediately after committing murder of Roopram, accused asked them to wake up and he made extra judicial confession before them. They all have stated that accused/appellant was sleeping with them and after accused disclosed about commission of murder of Roopram, they went near the body of Roopram. They saw Roopram lying dead on the cot. Nothing is coming on record in the cross-examination to establish that these witnesses had inimical relationship with the accused and they had any grudge against the accused in order to implicate him in a false case, that too for murder of his own father-in-law. They were also closely related to the accused, who is none else than the brother-in-law of the two witnesses and son-in-law of one witness. It is difficult to digest that such witnesses, who are close relatives of the accused/appellant, will try to implicate him in a criminal case that too in a serious crime like murder, therefore, the evidence of these 3 witnesses inspires the confidence of this Court that accused/appellant made extra judicial confession before them regarding commission of murder of Roopram by him.	

मामला क्रमांक

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8 we do not find any illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merits is liable to be dismissed and is accordingly dismissed. Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge

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